

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012120331

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On December 07, 2012, Parent on behalf of Student filed a due process hearing request<sup>1</sup> (complaint) naming the Torrance Unified School District (District).

On December 21, 2012, District filed a timely notice of insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>2</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.<sup>3</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.<sup>4</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</sup> The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>7</sup>

## DISCUSSION

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint.

In his complaint, Student, a seven year old boy with Down’s syndrome and a seizure disorder, alleges that he was not offered an increase in speech services in his March 6, 2012 IEP, despite Student having failed to meet any of his communication goals. In addition, at the June 28, 2012 meeting to discuss an occupational therapy (OT) evaluation of Student, the District offered services to address Student’s fine motor needs, but neglected the gross motor needs identified in the OT report. Student also alleges that after he suffered a series of injuries and “went missing” on campus during the 2012-2013 school year, Parent requested an IEP team meeting to discuss an alternative placement and/or continuous supervision on October 15, 2012, but at the IEP team meeting on November 14, 2012, no alternate placement or supervision services were offered. The complaint identifies as issues for hearing District’s denial of a FAPE to Student by: (1) failing from March 2012 to provide adequate speech services, to evaluate Student for augmentative and alternative communication, to address Parent’s concerns regarding Student’s safety, or from July 2012

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<sup>4</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

<sup>7</sup> Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

to offer services to meet Student's gross motor needs; (2) failing from September 2012 to provide Student with necessary supervision for his safety, and (3) failing between October 15 and November 14, 2012, to place Student in an alternate or interim placement for his safety pending the November 14, 2012 IEP team meeting, and then failing to offer a FAPE at the November 14, 2012 IEP.

Student's complaint does not state, but implies, that Parent pulled Student from school on October 15, 2012, after Student went missing from campus, due to safety concerns. Regardless, Student alleges that he was not offered a FAPE from October 15, 2012 through November 14, 2012, or in the IEP of November 14, 2012, due to Student's need for constant supervision, and the ambiguity concerning whether Student was on campus after October 15, 2012 is not fatal to Student's claims of District's denial of FAPE during the 2012-2013 school year.

As proposed resolutions, Student seeks placement at the location of Parent's choice, compensatory education from October 15, 2012, an independent educational evaluation in the area of adaptive augmentative communication, augmentative communication goals and compensatory services, OT goals and compensatory services and a behavior support plan for Student's safety on campus, including continuous supervision.

Student's complaint identifies the issues and adequate related facts about the problem to permit the District to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's statement of the three claims is sufficient.

### ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: December 26, 2012

/s/

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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings